

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
WEST VIRGINIA UNIVERSITY)	File No. 0004362859
)	
Request for Waiver of Section 90.35(c)(6) of the)	
Commission's Rules in the 150-174 MHz)	
Frequency Band)	

ORDER

Adopted: February 4, 2011

Released: February 7, 2011

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* This *Order* grants a request for waiver, and denies an informal objection, with respect to the above-captioned application filed by West Virginia University (WVU) for a new centralized trunked Industrial/Business Pool station at Morgantown, West Virginia.¹ For the reasons stated below, we will process the application.

2. *Background.* On August 24, 2010, WVU filed the above-captioned application for authorization to use fourteen 150-174 MHz frequencies in and around Morgantown, West Virginia. Specifically, it proposed to use frequencies 150.9200 MHz, 151.6700 MHz, 151.9100 MHz, 152.3375 MHz, 152.8625 MHz, 153.0800 MHz, and 153.4025 MHz as base frequencies, and frequencies 157.5675 MHz, 157.5975 MHz, 157.6125 MHz, 157.6500 MHz, 157.6800 MHz, 157.7100 MHz, and 158.4450 MHz as mobile frequencies. The application was granted on September 7, 2010 under Call Sign WQMK731.

3. On September 23, 2010, Enterprise Wireless Alliance (EWA) requested that the Commission restore the application to pending status and return it to the applicant.² EWA contended that WVU's proposed use of base frequency 151.6700 MHz did not provide sufficient separation to certain incumbent co-channel stations; WVU's proposed use of mobile frequency 157.6800 MHz did not provide sufficient separation to co-channel Station WPQB226, Philippi, West Virginia, licensed to Alderson-Broaddus College (ABC); and WVU's proposed use of frequencies 157.5675 MHz, 157.5975 MHz, 157.6125 MHz, 157.6500 MHz, 157.6800 MHz, and 157.7100 MHz did not comply with the 5.26 megahertz channel pairing required by Section 90.35(c)(6) of the Commission's Rules.³ EWA attached engineering analyses to document its conclusions regarding frequencies 151.6700 MHz and 157.6800 MHz. On September 29, 2010, the Wireless Telecommunications Bureau's Mobility Division (Division) set aside

¹ See FCC File No. 0004362859 (filed August 24, 2010; amended October 28, 2010).

² See Letter from Andre F. Cote, Senior Vice President, Enterprise Wireless Alliance, to Terry Fishel, Deputy Chief, Licensing and Technical Analysis Branch, Mobility Division, Wireless Telecommunications Bureau (dated September 23, 2010).

³ 47 C.F.R. § 90.35(c)(6).

the grant, and returned the application to allow WVU an opportunity to respond to the matters raised by EWA.⁴

4. On October 26, 2010, WVU amended the application to request a waiver of Section 90.35(c)(6).⁵ On October 27, 2010, WVU's frequency coordinator, Manufacturers Radio Frequency Advisory Committee, Inc. (MRFAC), submitted an engineering analysis indicating that WVU's proposed use of mobile frequency 157.6800 MHz provides sufficient separation to Station WPQB226.⁶ On October 28, 2010, WVU amended the application to substitute frequency 153.7025 MHz for frequency 151.6700 MHz, rendering moot the question of whether WVU's proposed use of frequency 151.6700 MHz provided sufficient separation to incumbent co-channel stations.

5. *Discussion.* Two issues remain before us: whether WVU's proposed use of frequency 157.6800 MHz provides sufficient separation to Station WPQB226; and whether WVU should be granted a waiver to pair frequencies 157.5675 MHz, 157.6125 MHz, 157.6500 MHz, 157.6800 MHz, and 157.7100 MHz with non-standard base station frequencies. We address them below.

6. Sufficient separation. Section 90.187 of the Commission's Rules specifies the manner in which centralized trunking may be accomplished.⁷ Essentially, centralized trunking is not permitted unless the applicant has the consent of any co-channel incumbent whose service contour would be overlapped by the applicant's predicted interference contour.⁸ We have reviewed the engineering analyses submitted by EWA and MRFAC. In addition, Division engineering staff conducted an independent analysis, which reached the same conclusion as MRFAC's study. We therefore agree with MRFAC that WVU's predicted interference contour on frequency 157.6800 MHz does not overlap ABC's service contour. Consequently, we conclude that the application meets the requirements of Section 90.187.

7. Waiver of Section 90.35(c)(6). Section 90.35(c)(6) requires that certain frequencies, including frequencies 157.5675 MHz, 157.6125 MHz, 157.6500 MHz, 157.6800 MHz, and 157.7100 MHz, be paired with a 5.26 megahertz separation between base and mobile transmit frequencies.⁹ WVU seeks a waiver of this requirement, and proposes to use the frequencies in non-standard pairings. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case and that grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual

⁴ See Letter from Terry Fishel, Associate Chief, Mobility Division, Wireless Telecommunications Bureau to Stephen Vozniak, West Virginia University (dated September 29, 2010).

⁵ See Letter from Stephen Vozniak, Facilities Engineer, WVU to Terry Fishel, FCC (Waiver Request). EWA takes no position on whether the Waiver Request should be granted. See Letter from Mark E. Crosby, President/CEO, EWA to Scot Stone, Wireless Telecommunications Bureau (dated Feb. 3, 2011).

⁶ See Letter from Jim Pakla, Administrator, MRFAC, to Terry Fishel, Associate Chief, Mobility Division, Wireless Telecommunications Bureau (dated October 27, 2010).

⁷ See 47 C.F.R. § 90.187.

⁸ See 47 C.F.R. § 90.187(b)(2). For more information regarding the trunking rules, see Amendment of Part 90 of the Commission's Rules, *Second Report and Order and Second Further Notice of Proposed Rule Making*, WP Docket No. 07-100, 25 FCC Rcd 2479, 2493-97 ¶¶ 35-43 (2010).

⁹ See 47 C.F.R. § 90.35(c)(6).

circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁰ We conclude that WVU has demonstrated that its request should be granted under the first prong.

8. The frequencies at issue formerly were allotted to the Taxicab Radio Service.¹¹ When the Commission consolidated the Taxicab Radio Service into the Industrial/Business Pool, it required that these frequencies be paired only with a 5.26 megahertz separation between base and mobile transmit frequencies in order to ensure compatibility with existing two-frequency simplex taxicab operations.¹² It does not appear that WVU's proposed operations pose an interference threat to any existing taxicab (or other) operations. We therefore agree with WVU that the underlying purpose of the rule would not be served by application to the present case.¹³ We also agree that grant of the waiver would be in the public interest, for it will permit the implementation of a spectrally efficient trunked system¹⁴ on frequencies that might otherwise not be assignable.¹⁵ We therefore grant WVU's waiver request.

9. *Conclusion.* We conclude that the above-captioned application should be processed. We believe that WVU's proposed use of frequency 157.6800 MHz meets the requirements of Section 90.187. In addition, we grant a waiver of Section 90.35(c)(6) to permit WVU to use frequencies 157.5675 MHz, 157.6125 MHz, 157.6500 MHz, 157.6800 MHz, and 157.7100 MHz in non-standard pairs.

10. Accordingly, IT IS ORDERED, pursuant to Sections 2 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152, 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the request for waiver filed by West Virginia University on October 26, 2010 in connection with FCC File No. 0004362859 IS GRANTED, and that application FCC File No. 0004362859 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

11. This action is taken pursuant to delegated authority granted under the provisions of Sections 0.131(a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a), 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁰ 47 C.F.R. § 1.925(b)(3).

¹¹ See 47 C.F.R. § 90.93(b) (1997).

¹² See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd 8642, 8664 ¶ 45 (1999).

¹³ See Waiver Request at 3.

¹⁴ See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14359 (1997) (noting that centralized trunked systems are more efficient than conventional systems).

¹⁵ See *id.* at 4.